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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/706,638	11/12/2003	Amit V. Patel	911	7888

7590 04/17/2007
Amit V. Patel
2289 Willoway Street
Yorktown Heights, NY 10598

EXAMINER

JACKSON, BRANDON LEE

ART UNIT	PAPER NUMBER
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3772

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
30 DAYS	04/17/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

DETAILED ACTION

Response to Amendment

The reply filed on 3/22/2007 is not fully responsive to the prior Office Action because of the following omission(s) or matter(s):

First, on page 2 in the last paragraph, Applicant references a "July 26, 2007 response," however, this date is in the future, so it is assumed that Applicant is referring to the response filed January 26, 2007 where applicant attempted to elect Species II as noted in the previous Notice of Non-compliance. Applicant may not cancel elected claims and then submit withdrawn claims to be examined. The policy of the office is not to permit the applicant to shift to claiming another invention after an election is made and an action on the merits of the elected subject matter is made. See MPEP 819.

Second, with respect to Applicant's argument that he should not be required to elect Species I, because he did not affirm the election of Species I in the action. It is a necessity that Applicant affirms the election in order to continue prosecution of the applicant. Failure to affirm the election will be deemed non-compliant under CFR 1.142(a). the restriction requirement was made before an action on the merits, therefore a shift in invention after action is not proper. At the time of the conversation with the examiner during the oral election of Species I, **without traverse**, Applicant had the opportunity to choose **one** invention to prosecute.

Third, with respect to Applicant's request for reconsideration of and withdrawal of the restriction itself according to CFR 1.143, Applicant has misinterpreted the rule itself.

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CFR 1.143 provides an Applicant the right to present arguments and/or evidence as to why the restriction requirement was improper according to CFR 1.111(b). However, this does not provide legal basis for merely reconsidering one's original election of a single invention. Thus, Applicant should revert back to claims 1-12 as originally elected or file a continuation to prosecute the non-elected invention and abandon the instant application. See 37 CFR 1.111. Since the above-mentioned reply appears to be *bona fide*, applicant is given **ONE (1) MONTH or THIRTY (30) DAYS** from the mailing date of this notice, whichever is longer, within which to supply the omission or correction in order to avoid abandonment. EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136(a).

Applicant may consider using legal representation. A list of patent professional can be found on the PTO official website (www.USPTO.gov).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brandon Jackson whose telephone number is (571)272-3414. The examiner can normally be reached on Monday - Friday 8-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Bianco can be reached on (571)272-4940. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Brandon Jackson
Examiner
Art Unit 3772

BLJ


PATRICIA BIANCO
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4-16-07